

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FLATIRON HEALTH, INC.,

Plaintiff,

v.

KENNETH CARSON, M.D.,

Defendant.  
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Case No. 1:19-cv-08999-VM-DCF

**STIPULATION AND ~~PROPOSED~~ ORDER MODIFYING RULE 62(d) INJUNCTION**

WHEREAS, on October 30, 2019, this Court issued a Decision and Order granting Plaintiff Flatiron Health, Inc.'s ("Flatiron") request for a preliminary injunction prohibiting Defendant Kenneth Carson, M.D. ("Dr. Carson") from working for non-party Tempus Labs, Inc. ("Tempus") pending trial, following Dr. Carson's termination of his employment by Flatiron (*see* ECF No. 46);

WHEREAS, following a bench trial, on February 19, 2020, the Court issued a Decision and Order denying Flatiron's request for a declaratory judgment and for a permanent injunction restraining Dr. Carson from, among other things, working for Tempus until September 26, 2020 (*see* ECF No. 94);

WHEREAS, on February 20, 2020, the Court entered judgment in Dr. Carson's favor in accordance with the Court's February 19, 2020 Decision and Order (*see* ECF No. 95);

WHEREAS, on March 20, 2020, the Court issued a Decision and Order (1) setting forth the Court's findings of fact and conclusions of law in support of its February 19, 2020 Decision and Order and corresponding judgment pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, and (2) granting Flatiron's request for a declaratory judgment that Dr. Carson "is contractually bound not to retain, use or disclose to third parties any of Flatiron's trade secrets and confidential information" (*see* ECF No. 106);

WHEREAS, on April 1, 2020, the Court issued a Decision and Order pursuant to Rule 62(d) of the Federal Rules of Civil Procedure (i) denying Flatiron's requests for a temporary restraining order and injunction prohibiting Dr. Carson from working for Tempus pending its appeal of the Court's Orders of February 19, 2020 and March 20, 2020, and (ii) granting in part Flatiron's request for an injunction requiring Dr. Carson to abide by certain limitations on the scope of his employment at Tempus pending Flatiron's appeal of the Court's February 19, 2020 and March 20, 2020 Orders (*see* ECF No. 107, the "Rule 62(d) Order");

WHEREAS, on April 14, 2020, Dr. Carson filed a request for clarification of the Court's Rule 62(d) Order (*see* ECF No. 109);

WHEREAS, on April 20, 2020, Flatiron filed a response to Dr. Carson's request for clarification of the Court's Rule 62(d) Order;

WHEREAS, on April 21, 2020 Dr. Carson filed a reply in support of his request for clarification of the Court's Rule 62(d) Order;

WHEREAS, on April 21, 2020, the Court issued an Order directing the parties to meet and confer and endeavor to reach an accord on the issues on which they disagreed in connection with Dr. Carson's April 14, 2020 request for clarification (*see* ECF No. 110);

WHEREAS, on April 29, 2020, Dr. Carson advised the Court that the parties had reached an agreement in principle on the issues initially raised in Dr. Carson's April 14, 2020 request for clarification as well as resolving all of the outstanding litigation related to the dispute (*see* ECF No. 112);

NOW, THEREFORE, IT IS STIPULATED AND AGREED by the undersigned parties, through their attorneys and subject to the Court's approval that the Rule 62(d) Order is hereby modified as follows:

1. Dr. Carson is permitted to work on COVID-19-related projects at Tempus, provided that, until September 26, 2020: (i) such projects do not also involve or relate to cancer research, (ii) Dr. Carson abides by the general prohibition against the use or disclosure of Flatiron's confidential information and trade secrets, as described in the Rule 62(d) Order; and (iii) Dr. Carson does not work on COVID-19-related projects directly on behalf of Tempus's pharmaceutical company clients, although projects that may ultimately have some pharmaceutical company involvement, including but not limited to Tempus's "Evidence Accelerator" project, are permissible;

2. Dr. Carson shall not be deemed to be in violation of the Rule 62(d) Order if, despite his good-faith efforts to avoid it, he is or becomes the passive recipient of information related to matters with which he is precluded from working under the terms of the Rule 62(d) Order, provided that Dr. Carson shall not provide input or comment upon such information in the event that he receives it;

3. Except to the extent modified herein, the restrictions and requirements in the Rule 62(d) Order shall otherwise remain in place until September 26, 2020, notwithstanding the voluntary dismissal of Flatiron's appeal of the Court's February 19, 2020 and March 20, 2020 Orders;

4. On September 26, 2020, the Flatiron non-compete shall have expired and no longer apply to Dr. Carson. For the avoidance of doubt, Dr. Carson's confidentiality obligations to Flatiron do not expire and he shall continue to fully comply with his confidentiality obligations;

5. The bonds that Flatiron has posted in connection with this lawsuit shall be deemed cancelled and returned upon endorsement by the Court; and

6. This stipulation may be enforced by the Court.

DATED: May 8, 2020



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Scott D. Musoff  
Julie E. Cohen  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
One Manhattan West  
New York, New York 10001  
Tel: (212) 735-3000  
Fax: (212) 735-2000  
scott.musoff@skadden.com  
julie.cohen@skadden.com

*Attorneys for Defendant Kenneth Carson, M.D.*




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Robert P. Haney, Jr.  
Ali Mojibi Yazdi  
Teresa T. Lewi  
COVINGTON & BURLING LLP  
620 Eighth Avenue  
New York, New York 10018  
Tel: (212) 841-1000  
Fax: (212) 841-1010  
rhaney@cov.com  
amojibi@cov.com  
tlewi@cov.com

*Attorneys for Plaintiff Flatiron Health, Inc.*

SO ORDERED this 11 day of May, 2020,



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Victor Marrero  
U.S.D.J.